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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,447	03/02/2004	Janzen Lo	3186.00004	3444

7590 02/26/2007
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EXAMINER

HOFFMAN, MARY C

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/791,447	Applicant(s) LO ET AL.	
	Examiner Mary Hoffman	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/20/2006, 07/17/2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 6-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/2/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/17/2006 has been entered.

Election/Restrictions

Applicant's election without traverse of Group I, apparatus claims 1-5, in the reply filed on 11/20/2006 is acknowledged.

Claims 6-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/20/2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1- 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Lane (U.S. Patent No. 5,735,857).

Lane discloses an implant insertion device comprising an insertion rod (ref. #14, or ref. #50) and an implant gripper (ref. #15) attached to the insertion rod, the implant gripper including a gripping surface; a first pin (ref. #20) extending from and fixed relative to the gripping surface; and a second pin (ref. #36) extending through and movable relative to the gripping surface between a first position wherein the second pin extends from the gripping surface a distance x and a second position wherein the second pin extends a distance less than x from the gripping surface. The gripping surface is v-shaped, and the pins are separated by an angle of approximately 30 degrees. The first pin is smooth and the tip (ref. #30) of the second pin (ref. #36) is smooth. The implant gripper is removable from the insertion rod (ref. #50).

Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Kashuba et al. (U.S. Patent No. 5,098,437).

Kashuba et al. disclose an implant insertion device comprising an insertion rod (ref. #22) and an implant gripper (ref. #12) attached to the insertion rod, the implant gripper including a gripping surface; a first pin (ref. #58) extending from and fixed relative to the gripping surface; and a second pin (ref. #40) extending through and movable relative to the gripping surface between a first position wherein the second pin extends from the gripping surface a distance x and a second position wherein the second pin extends a distance less than x from the gripping surface. The first pin and the second pin are smooth. The implant gripper is removable from the insertion rod.

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Claims 1-2 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Salyer (U.S. Patent no. 5,171,313).

Salyer discloses an implant insertion device comprising an insertion rod (ref. #16) and an implant gripper (ref. #18) attached to the insertion rod, the implant gripper including: a gripping surface; a first pin (ref. #28) extending from and fixed relative to the gripping surface; and a second pin (ref. #26 or 44) extending through and movable relative to the gripping surface between a first position wherein the second pin extends from the gripping surface a distance x and a second position wherein the second pin extends a distance less than x from the gripping surface. The gripping surface is v-shaped. The first pin and the second pin are smooth. The implant gripper is removable from the insertion rod.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kashuba et al. (U.S. Patent No. 5,098,437).

Kashuba et al. disclose the claimed invention except for the first pin and said second pin being offset by an angle of approximately 30 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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construct the device of Kashuba et al. with the first pin and said second pin being offset by an angle of approximately 30 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER